

210.045 Additional duties -- Requirements as to closure of certain state-owned or state-operated mental facilities.

- (1) The Cabinet for Health and Family Services shall:
 - (a) Maintain, operate, and assume program responsibility for all state institutions and facilities for mental retardation;
 - (b) Provide rehabilitation services for mentally retarded persons through educational and training programs;
 - (c) Provide medical and allied services to mentally retarded persons and their families;
 - (d) Encourage and assist communities to develop programs and facilities in the field of mental retardation;
 - (e) Sponsor or carry out research, or both, in the field of mental retardation;
 - (f) Assist other governmental and private agencies in the development of programs and services for mentally retarded persons and their families and for the prevention of mental retardation, and coordinate programs and services so developed;
 - (g) Provide written notice to the Legislative Research Commission of its intent to propose legislation to permit immediate or gradual closure of any state-owned or state-operated facility that provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and
 - (h)
 1. Provide written notice by registered mail to each resident, his or her immediate family, if known, and his or her guardian of its intent to propose legislation to permit immediate or gradual closure of any state-operated facility that provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and
 2. Include in the written notice provided under this paragraph that the resident, the resident's immediate family, his or her guardian, or any other interested party with standing to act on behalf of the resident has the right to pursue legal action relating to the notice provisions of this paragraph and relating to the closure of the facility.
- (2) Any state-owned or state-operated facility or group home that provides residential services to persons with mental retardation or other developmental disabilities and that has been funded by the General Assembly in a specific biennium, shall not be closed, nor shall the Cabinet for Health and Family Services announce the pending closure of the facility, during the same biennium except through the provisions specified by subsection (1) of this section.
- (3) The Cabinet for Health and Family Services may close any state-owned or state-operated facility that provides residential services to persons with mental retardation or other developmental disabilities upon the effective date of an adopted act of legislation.

- (4) When a demonstrated health or safety emergency exists for a facility or a federal action that requires or necessitates a gradual or immediate closure exists for the facility, the cabinet may seek relief from the requirements of this section in the Circuit Court of the county where the facility is located. In these situations:
- (a) The cabinet shall provide written notice by registered mail to each resident, the resident's immediate family, if known, and his or her guardian, at least ten (10) days prior to filing an emergency petition in the Circuit Court; and
 - (b) All interested parties, including the cabinet, the resident, his or her immediate family, his or her guardian, or other interested parties with standing to act on behalf of the resident shall have standing in the proceedings under this subsection.
- (5) Any resident, family member or guardian, or other interested parties, as defined by KRS 387.510(12) with standing to act on behalf of the resident who wishes to challenge the decision or actions of the Cabinet for Health and Family Services regarding the notice requirements of subsection (1) of this section shall have a cause of action in the Circuit Court of the county in which the facility is located, or in Franklin Circuit Court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section.
- (6) Any resident, family member or guardian, or other interested parties, as defined by KRS 387.510(12) with standing to act on behalf of the resident may challenge the decision of the state to close a facility in a de novo hearing in the Circuit Court of the county in which the facility is located, or in Franklin Circuit Court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 99, sec. 303, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 318, sec. 1, effective April 5, 2000. -- Amended 1998 Ky. Acts ch. 426, sec. 248, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(1) and (9). -- Created 1962 Ky. Acts ch. 106, Art. XI, sec. 2.

2006-2008 Budget Reference. See State/Executive Branch Budget, 2006 Ky. Acts ch. 252, Pt. I, H.4.(6), at 1191; and State/Executive Branch Budget Memorandum, 2006 Ky. Acts ch. 257, at 2757 (Final Budget Memorandum, at 1073).